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FINANCIAL
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ROUNDTABLE



INDEPENDENT COMMUNITY
BANKERS of AMERICA
The Nation's Voice for Community Banks®

July 1, 2015

Via Electronic Delivery

Robert deV. Frierson, Secretary,
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW.
Washington, DC 20551.

Re: Docket No. OP-1515; Enhancements to Federal Reserve Bank Same-Day ACH Service;
Request for Comments

Dear Mr. Frierson:

The Clearing House Association L.L.C., the American Bankers Association, the Consumer Bankers Association, the Financial Services Roundtable and the Independent Community Bankers of America (collectively the “Associations”)¹ respectfully submit this comment letter to the Federal Reserve Board (“Board”) in response to the Board’s request for comment on enhancements to the Federal Reserve Banks’ Same-Day ACH Service (“Request for Comment”).² The Request for Comment solicits input on whether changes to conform the current optional FedACH SameDay Service³ to NACHA’s new rules for same-day ACH⁴ (“NACHA SDA Rules”) would satisfy the criteria that must be met when the Board considers new services or major changes to existing Reserve Bank services. The changes, which would be incorporated into the Reserve Banks’ Operating Circular 4 (Automated Clearing House Items), include mandatory participation by Receiving Depository Institutions (“RDFIs”) and a 5.2 cent interbank fee that the Originating Depository Financial Institution (“ODFI”) would pay the RDFI for each same-day ACH forward transaction.

I. Introduction and Executive Summary

The Board believes that implementing mandatory same-day ACH services would constitute a major change to its existing FedACH service. When it considers new services or major changes to existing Reserve Bank services, the Board requires certain criteria to be satisfied. These criteria relate to

¹ Please see Appendix A for a description of each of the Associations.

² Enhancements to Federal Reserve Bank Same-Day ACH Service, Request for Comments, 80 Fed. Reg. 30246 (May 27, 2015).

³ FedACH SameDay Service, https://www.frbsservices.org/serviceofferings/fedach/sameday_service.html.

⁴ See, e.g., <https://www.nacha.org/content/same-day-ach>.

the Reserve Banks' ability to recover their costs in the long run, as well as whether the service yields a clear public benefit and is one that other providers alone cannot be expected to provide with reasonable effectiveness, scope, and equity. The Board states that it believes that the changes to conform its existing same-day ACH service to the NACHA SDA Rules would satisfy the required criteria and, as explained below, the Associations agree with that determination.

Moreover, the Associations believe that ubiquitous same-day ACH capability represents a significant and important improvement for the nation's payment system that would benefit both consumers and businesses in a number of ways, including through faster payroll, bill payment and e-commerce transactions. The Associations further believe that adoption of the NACHA SDA Rules by the Reserve Banks is essential to ensuring these benefits and we agree with the Board's observations regarding the Reserve Banks' participation. In particular, we agree that "[w]ithout adoption by the Reserve Banks, a significant number of depository institutions receiving ACH services from the Reserve Banks may not participate" and that "absent the ability to reach any RDFI in the ACH network, it may not be possible to implement an effective same-day ACH service and any corresponding public benefits would be limited."⁵

Accordingly, the Associations strongly support changes by the Reserve Banks to conform the current FedACH SameDay service to the NACHA SDA Rules, including with respect to the interbank fee and mandatory participation by RDFIs.

II. Discussion

On May 19, 2015, NACHA announced that its voting membership had adopted the NACHA SDA Rules. The Board explains that "[u]nlike the Reserve Banks' current FedACH SameDay Service, the amended [NACHA] operating rules require all RDFIs to participate in the same-day service, and ODFIs to pay a fee to RDFIs for each same-day ACH forward transaction (interbank fee)."⁶ The Clearing House, jointly with the Consumer Bankers Association, previously submitted a comment letter to NACHA supporting its 2014 proposal to amend the NACHA Operating Rules to provide for ubiquitous same-day ACH settlement and clearing capability.⁷

A. Criteria for Service Changes

The Federal Reserve Banks began offering an *optional* same-day ACH service in 2010. Under this service, the Reserve Banks charge participating ODFIs a per-item surcharge on the normal ACH processing fee and provide RDFIs a discount on the normal processing fee for receipt. The Board states that incorporating *mandatory* same-day ACH service into Operating Circular 4 "would reflect a

⁵ 80 Fed. Reg. 30246, 30247.

⁶ *Id.*

⁷ The Clearing House and the Consumer Bankers Association noted that the 2014 proposal addressed the most critical concerns raised by financial institutions in response to NACHA's 2011 Expedited Processing and Settlement Proposal, which was not approved by NACHA's voting membership. In particular, we emphasized our agreement with NACHA's observation that in order to "create a new, viable capability for moving payments faster, both Originating and Receiving Financial Institutions must see a rational business justification for making the required investments."

significant change to the Reserve Banks' current ACH services."⁸ When considering major service enhancements, the Board requires the following criteria to be satisfied:

- (i) the service must enable full long-run recovery of costs by the Reserve Banks;
- (ii) the service must yield a clear public benefit; and
- (iii) the service must be one that other providers alone cannot be expected to provide with reasonable effectiveness, scope, and equity.

The Board indicates that it believes that implementing same-day ACH service would satisfy all three of these criteria, and The Clearing House agrees with this assessment.

Cost Recovery

The Board states that "the introduction of a FedACH same-day service with mandatory participation by RDFIs and an interbank fee would not adversely affect the Reserve Banks' ability to recover the cost of providing the ACH service over the long run."⁹ The Associations concur with the Board's view that the Reserve Banks will be able to recover the implementation and operating costs associated with expanded same-day ACH service through the fees the Reserve Banks charge their ACH customers.

Public Benefit

The Board believes same-day ACH "offers clear public benefits" and the Associations agree. There are a number of uses of ACH payments that would be enhanced by same-day processing and settlement, such as urgent bill payment, payroll and business to business transactions, among others.¹⁰

Ubiquitous same-day ACH capability would also be an important upgrade to the nation's payment system and is consistent with the Federal Reserve's *Strategies for Improving the US Payment System* paper ("Payments Improvement White Paper"). The Payments Improvement White Paper expresses support for ubiquitous same-day ACH services and the benefits faster transactions would provide the public. For example, the paper states that "same-day ACH capability would facilitate the use of the ACH for certain time-critical payments, accelerate final settlement and may improve funds availability to payment recipients."¹¹ The paper further explains that "[t]he Federal Reserve supports pursuing a phased approach toward ubiquitous, same-day ACH settlement capability for most transactions."¹² We agree that by establishing a new capability for intraday ACH processing and

⁸ 80 Fed. Reg. 30246, 30247.

⁹ *Id.*

¹⁰ We recognize that because same-day settlement will enable funds to move more quickly, there will be less time for financial institutions to identify fraudulent or erroneous transactions. However, we believe that financial institutions are prepared to institute the necessary controls and make the necessary investments to protect their customers and to mitigate any increased risks associated with these faster transactions.

¹¹ *Strategies for Improving the U.S. Payment System*, <http://fedpaymentsimprovement.org/wp-content/uploads/strategies-improving-us-payment-system.pdf>.

¹² *Id.*

settlement, a ubiquitous same-day service would provide numerous public benefits and be an important upgrade to the nation's payment system.

Other Providers Alone

The Board states that to achieve the benefits of same-day ACH, the service must be ubiquitous. The Associations strongly agree with this position, and with the Board's view that if the Reserve Banks did not participate, "a significant number of depository institutions receiving ACH services from the Reserve Banks may not participate."¹³ We note that currently there are two ACH operators: the Reserve Banks and the Electronic Payments Network, a private sector ACH operator. Because the Reserve Banks are one of the two ACH operators and many institutions rely solely on the Reserve Banks for ACH services, we agree "that the private sector cannot be expected to provide the service alone with reasonable effectiveness, scope, or equity."¹⁴

B. Request for Comment

The Board also requested comment on two specific issues: (i) mandatory participation by RDFIs, and (ii) the interbank fee.

Mandatory Participation by RDFIs

As the Board recognizes in the Request for Comment, a key condition to achieving the benefits of same-day ACH is that the service must be ubiquitous.

The Board acknowledges that achieving ubiquity is unlikely in the absence of a mandate, and that this is demonstrated by the limited adoption of its current service. The Board requested comment on whether the FedACH same-day service "should remain optional and whether there are non-mandatory alternatives to achieving ubiquity."¹⁵ We believe that if the Board does not adopt a mandatory same-day ACH service in accordance with the NACHA SDA Rules, same-day ACH will provide limited public benefits because originators will not be able to reach the significant number of RDFIs that receive their ACH services solely from the Reserve Banks.¹⁶ Thus, the Associations support changes to the FedACH same-day service to require mandatory participation by RDFIs because we believe that it will not be possible to achieve the full benefits of same-day ACH unless same-day clearing and settlement are ubiquitous.

The current voluntary nature of the FedACH same-day service demonstrates this challenge. The Board acknowledges that in the five years since its introduction, FedACH same-day service, which is not

¹³ 80 Fed. Reg. 30246, 30247.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ We also note that in its Payments Improvement White Paper, the Federal Reserve states that it "learned [through market research of end preferences] that ubiquity is an important payment attribute to consumers and businesses." Strategies for Improving the U.S. Payment System. The paper points out the Federal Reserve's finding that 61 percent of consumers and 67 percent of businesses agreed that they "won't use a payment method unless it is used and accepted by most people and businesses" (i.e., they prefer ubiquitous payment products)." *Id.* at Appendix 3.

mandatory for RDFIs, “has experienced limited adoption” and that “fewer than 100 depository institutions are currently using the service.”¹⁷

For these reasons, we urge the Board to implement mandatory participation by RDFIs as part of the FedACH same-day service.

Interbank Fee

The Board states that it “recognizes that both ODFIs and RDFIs will need to make investments in systems and operations to facilitate same-day ACH transactions.”¹⁸ Further, while ODFIs will have the choice of offering same-day ACH services to their originator customers and imposing fees to recover their costs, RDFIs, which would be required to accept same-day transactions “may lack an effective method of offsetting the investment and ongoing costs of same-day ACH settlement.”¹⁹ The Board requests comment on whether the interbank fee “equitably reapportions the initial implementation costs and ongoing operating costs between ODFIs and RDFIs.”²⁰

Without an interbank fee, mandatory same-day ACH would create an imbalance between ODFIs and RDFIs because originators, which would derive the most value from faster ACH clearing and settlement would be most likely to pay for such enhancements, while receivers, which do not control the timing or speed of ACH entries, would not be likely to pay for same-day entries. As we explained in our comment letter to NACHA, we do not believe that implementation of same-day ACH would be economically viable for RDFIs in the absence of interbank compensation. Thus, we strongly support an interbank fee as the most practical means of providing a viable business case for RDFIs and balancing the benefits of same-day ACH across the network, and urge the Board to incorporate the fee into its same-day ACH service.

We note that the interbank fee provided for in the NACHA ballot was based on an extensive economic analysis, including a study of ODFI and RDFI costs to implement the specific features of NACHA’s proposal. This economic analysis helps to ensure that the interbank fee equitably balances the interests of both ODFIs and RDFIs. Specifically, the economic analysis included a review of likely use cases and same-day volumes, as well as a comprehensive cost analysis to determine implementation and on-going costs for financial institutions of all sizes. The research concluded that an interbank fee was the optimal method to ensure ubiquity of the service, and absent a fee, RDFIs would have no likelihood of recovering the costs to implement and operate the proposed same-day ACH service.

In addition, as described in the Request for Comment, the interbank fee is subject to economic controls that allow for downward pressure on the fee and re-evaluations that rely on criteria that limit the amount of the fee based on a cost recovery standard. In particular, the amount of the interbank fee will be reduced if actual same-day transaction volume exceeds projections by more than 25 percent during the first five and eight year periods after the final phase of the NACHA SDA Rules have taken effect. In addition, NACHA will perform a new economic analysis of costs and volume ten years after the

¹⁷ 80 Fed. Reg. 30246.

¹⁸ *Id.* at 30248.

¹⁹ *Id.*

²⁰ *Id.*

rule has been in full effect and the amount of the fee will be adjusted based on that review. As the Board points out, however, under no circumstances will the fee ever exceed 5.2 cents. The Associations believe that these controls help to ensure that the interbank fee will balance the interests of both ODFIs and RDFIs.

For these reasons, we fully support the implementation of the interbank fee as part of the FedACH same-day service.

C. Effective Date Contingency

Finally, we note that the effective date of the NACHA SDA Rules is contingent upon NACHA receiving written confirmation from the Board regarding its support for the rule. Given that the Board's adoption of the NACHA SDA Rules is essential to achieving ubiquitous same-day ACH capability, The Clearing House does not believe that financial institutions will make the required investments until the Board has confirmed its approval of and support for the rule. Thus, we urge the Board to act expeditiously to review and consider the responses it receives to the Request for Comment, make a final determination to support the NACHA SDA Rules, and provide NACHA with written confirmation as soon as reasonably possible. We believe that such action by the Board is necessary to provide the industry with the certainty it needs to move forward with this important payment system improvement.

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Thank you for the opportunity to provide these comments. If you have any questions or wish to discuss the Associations' comment letter, please do not hesitate to contact the undersigned.

Very truly yours,

The Clearing House

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Appendix A – Association Descriptions

The Clearing House

Established in 1853, The Clearing House is the oldest banking association and payments company in the United States. It is owned by the world's largest commercial banks, which collectively hold more than half of all U.S. deposits and which employ over one million people in the United States and more than two million people worldwide. The Clearing House Association L.L.C. is a nonpartisan advocacy organization that represents the interests of its owner banks by promoting and developing policies to support a safe, sound and competitive banking system that serves customers and communities. Its affiliate, The Clearing House Payments Company L.L.C., which is regulated as a systemically important financial market utility, owns and operates payments technology infrastructure that provides safe and efficient payment, clearing and settlement services to financial institutions, and leads innovation and thought leadership activities for the next generation of payments. It clears almost \$2 trillion each day, representing nearly half of all automated clearing-house, funds transfer and check-image payments made in the United States. See The Clearing House's web page at www.theclearinghouse.org.

American Bankers Association

The American Bankers Association is the voice of the nation's \$15 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard \$11 trillion in deposits and extend more than 48 trillion in loans. Learn more at www.aba.com.

Consumer Bankers Association

Founded in 1919, the Consumer Bankers Association (CBA) is the trade association for today's leaders in retail banking – banking services geared toward consumers and small businesses. The nation's largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding well over half of the industry's total assets. CBA's mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

Financial Services Roundtable

Financial Services Roundtable represents the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs. For more information, visit FSRoundtable.org.

Independent Community Bankers of America

The Independent Community Bankers of America®, the nation's voice for 6,400 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services.

ICBA members operate 24,000 locations nationwide, employ 300,000 Americans and hold \$1.4 trillion in assets, \$1.1 trillion in deposits, and \$900 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.